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California Energy Commission  
1516 Ninth Street  
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<b>DOCKET</b>	
<b>04-IEP-1</b> ✓	
<b>DATE</b>	OCT 14 2005
<b>RECD.</b>	OCT 14 2005

**Re: Docket No. 04 IEP 1K, Comments on Avian Mortality Section of Draft IEPR**

Dear Commissioners:

Audubon California submits these comments on behalf of its nearly 60,000 members in response to the Draft IEPR released in September 2005. Our comments focus on the section "Repowering Wind Resources and Reducing Bird Deaths," both goals that Audubon strongly supports. We are concerned that some of the statements in this section are confusing or inaccurate and could make it harder to achieve the goals of encouraging wind power while reducing avian impacts. Our specific recommendations to clarify and correct certain statements in the Draft IEPR are below.

Before addressing some specific recommendations, we would like to thank the Commissioners and CEC staff for your leadership on and attention to this important issue. Agencies and stakeholders around the world look to California as a model and to the CEC in particular for solutions on this and other important energy policy issues. Studies and recommendations commissioned by the CEC, even if they have in recent months become controversial, provide an important base of information and options for beginning to reduce bird mortality from existing and future wind power developments. This work needs to continue and we urge all stakeholders to focus on how to move these issues forward.

As a general comment, we are very troubled by some of the wind company representatives' efforts to magnify or exaggerate scientific uncertainties rather than focus their considerable talents and efforts on reducing avian impacts from wind power. This is disturbingly similar to the coal and heavy industry's efforts to cast doubts on climate change science by trying to focus on the scientific uncertainties at the margins rather than the broad consensus about the core problem and solutions. As with climate change, there is no legitimate scientific debate about whether or not wind power at Altamont has significant negative impacts on birds, nor is there uncertainty about some of the ways to reduce those impacts. Trying to focus the debate on particular study methods or margins of error does not help to reduce avian mortality; it merely delays and distracts from designing and implementing mitigation measures and identifying the legitimate scientific questions that require ongoing research, monitoring and adaptive management.

The Commission should reject these diversions and focus on the real issues at Altamont: how to design and implement effective mitigation measures for various species, what additional research is needed, how to design and implement rigorous monitoring and adaptive management protocols, what the criteria should be for offsite mitigation, etc.

Unfortunately, the Draft IEPR lends credibility to industry's efforts to cast doubt on the best available science, which is the 2004 study "*Developing Methods to Reduce Bird Mortality in the Altamont Pass Wind Resource Area*." Unless revised, the Draft IEPR would hamper efforts to move quickly to reduce avian impacts at Altamont and avoid or reduce impacts at new wind power developments. We recommend the following specific changes to avoid creating the appearance of greater scientific uncertainty than actually exists.

## **1. The IEPR should not imply that the 2004 Altamont Study has been "misused."**

We agree with the Draft PIER that the 2004 study represents an "important initial effort to craft a methodology to prescribe mitigation measures."<sup>1</sup> We do not agree that it has been "misused to form the sole basis for such mitigation measures"<sup>2</sup> at Altamont or elsewhere. At Altamont, Alameda County adopted some – but by no means all - of the recommendations in the 2004 Study, but it also added the requirement for a scientific review committee that would help oversee mitigation, develop recommendations for adaptive management and begin to consider off-site mitigation. The County considered data from industry, other studies at Altamont, recommendations from numerous stakeholders and agencies and considerable other input in addition to the 2004 Study. The 2004 Study was neither the sole basis nor misused in designing the mitigation measures that the County adopted.

We agree that additional work must be done at Altamont on a number of research, monitoring and mitigation issues, but the 2004 Study is the most complete study to date and should be the basis – not the sole basis, but an important basis – for deciding on mitigation and ongoing research and monitoring needs at Altamont. We urge the CEC and other independent agencies and scientists to refine the data and continue to test the hypotheses in the 2004 Study, but in the meantime, it is entirely appropriate for the County and other entities to use the Study to develop mitigation and ongoing research measures.

Specific Recommendation: Strike the word "misused" and replace with "used" in the first sentence of the second paragraph on page 102.

## **2. The 2004 Study has Greater Evidentiary Value than Any other Altamont Study To Date.**

The Draft IEPR states that certain limitations in the 2004 Study deprive it of the evidentiary value that the CEC would require as the basis for mitigation measures in a power plant siting case.<sup>3</sup> We

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<sup>1</sup> Draft IEPR at p. 102.

<sup>2</sup> Id.

<sup>3</sup> "Inadequate access to certain turbines, time lapses between surveys, length of survey period, and various extrapolation techniques deprive it of the evidentiary value which the Energy Commission would require as the basis for mitigation measures in a power plant siting case." Id.

agree that there are gaps in the 2004 study – most notably, the almost exclusive focus on 4 raptor species – and the Study itself points out limitations and deficiencies and makes adjustments for those. For the species studied, though, the 2004 Study is the most comprehensive study to date and many of the recommendations it contains are agreed to be effective and/or suggested by industry itself (such as permanent turbine removal, repowering and seasonal shut-downs). Alameda County, the Attorney General and others relied on it heavily because no other similarly complete studies have been conducted at Altamont or elsewhere in California. To deny its evidentiary value at a time when the County had to make a decision about whether or not to renew permits or shut down the turbines would be to ask the County and others to ignore the best available science. “Best available” does not mean perfect, nor does it mean that it lacks important evidentiary value.

Unfortunately, some industry spokespeople have characterized the comment in the Draft IEPR as recognition of the 2004 Study’s “serious flaws,”<sup>4</sup> which ignores all of the valuable data, conclusions and recommendations in the Study, including data and recommendations from the 2004 Study that some of the Altamont operators relied on in their Buena Vista permit application. More disturbingly, it threatens to sidetrack important questions about how to move forward by keeping the focus of the debate on the adequacy of the 2004 Study, rather than how to identify and fill in gaps in information and test the efficacy of the recommendations in that Study.

Specific Recommendation: Delete the second sentence of paragraph 2 on page 102.

### **3. The Draft IEPR Confuses Results with Recommendations.**

We agree that the results and recommendations of the 2004 Study should not be applied wholesale at other locations. We also agree that some of the *mitigation measures* recommended for Altamont are still experimental. But there is a difference between experimental mitigation measures and experimental results. The Draft IEPR states that the “scientific value of ongoing Energy Commission research into avian mortality prevention should not be jeopardized by misapplication of what are essentially experimental results.”<sup>5</sup> Direct observations and findings are not “experimental.” They may be incomplete or inconclusive on some issues, which the 2004 Study authors explicitly acknowledge in several areas, but that does not make the results “experimental.”

The part of the Study that can accurately be deemed experimental is in the recommendations section, although not all the recommendations are experimental either. Removing the most destructive and least efficient turbines is not an “experimental” technique for reducing bird mortality.

The 2004 Study acknowledges the experimental nature of some of the suggested mitigation measures and suggests a fairly wide range of effectiveness for the mitigation measures if applied together. That is precisely why Alameda County insisted on a mechanism for monitoring and adaptive management. But to suggest that implementing some of the recommended mitigation measures would be a “misapplication” because they are still experimental suggests that no mitigation should be required until its exact effectiveness can be proven beyond a doubt. That would leave Alameda County with no alternative except to deny the renewal permits until “non-

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<sup>4</sup> CalWEA Announcement, September 2005.

<sup>5</sup> Draft IEPR at page 102.

experimental” mitigation measures can be designed and demonstrated with virtually certain results. While this may be an acceptable standard for new projects, it is not for an ongoing and indisputably harmful one.

All parties acknowledge that we do not yet know exactly how effective the various mitigation measures (except turbine removal) will be. That is not unusual in an environmental permitting process. The only way to determine which are the most effective (and cost-effective) mitigation measures is to apply them, monitor them and adapt them in a scientifically rigorous manner. This is not a “misapplication” of the suggested mitigation measures. It is, in fact, the only way to determine more precisely how much onsite mitigation is possible and feasible. What could have greater scientific value for determining how to reduce avian impacts than applying experimental mitigation measures in a scientific manner and determining which ones work and to what extent?

Specific Recommendation: Replace the last sentence of paragraph 2 on page 102 with “The Commission should continue to support scientific research, and especially applied research, on ways to reduce avian mortality, including helping to design study, monitoring and adaptive management protocols to determine and ensure the effectiveness of proposed mitigation measures.”

As stated above, Audubon is truly grateful for your leadership on this and other important energy policy issues. The Draft IEPR will compromise that leadership, however, by undermining the value and application of the 2004 Study and its recommendations and by encouraging wind industry representatives to continue to focus on critiquing past studies rather than stepping up to address the problem of avian mortality. We urge the Commission to make the changes recommended above to shift the debate and the scientific focus to specific ways to reduce avian mortality as quickly and effectively as possible.

Thank you for your consideration of these comments.

Respectfully submitted,

Julia A. Levin  
State Policy Director